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Attorney for Plaintiff Carolyn Wesley

UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAROLYN WESLEY,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
Defendants.

) Case No: C 07-4685 MMC
)
) JOINT CASE MANAGEMENT STATEMENT
)
) Date: December 14, 2007
) Time: 10:30 a.m.
) Before: Hon. Maxine Chesney
) Place: Ctrm 7; 19th Fl.
)
)

Plaintiff Carolyn Wesley and Defendant United States hereby submit this Joint Case Management Statement and Proposed Case Management Order and request the Court to adopt it as the Case Management Order in this case, pursuant to Federal Rule of Civil Procedure 16 and Civil L.R. 16-10(b).

JOINT CASE MANAGEMENT STATEMENT

1. Description of the Case:

This action is one for personal injury arising out of a trip and fall occurring at night on January 5, 2005, on the East side of 7th Street adjacent to Federal Courts of Appeal Building at 7th & Mission Streets, San Francisco, CA.

a. Plaintiff's contentions: Open tree grating (tree missing) caused Plaintiff to trip and fall. Plaintiff was walking in southerly direction, did not see missing tree and open hole. Stepped into the

1 hole and fell forward, striking her head with loss of consciousness. (The location of the tree grate is
2 curb side and, on information and belief, is a Defendant owned and maintained tree.) Plaintiff contends
3 : Premises liability - dangerous condition, i.e. it was not trivial, minor or insignificant. Defendant had
4 actual knowledge of dangerous condition. In the alternative, Defendant had constructive knowledge of
5 dangerous condition. Plaintiff alleges that the Defendant had reasonable and adequate time within
6 which to affect maintenance and/or repairs and failed to do so. Plaintiff alleges that the Defendant had
7 reasonable and adequate time within which to affect warning and/or safety barriers around the dangerous
8 condition but failed to do so. Plaintiff alleges that the Defendant does not have a reasonable sidewalk
9 inspection program or, if it does have a sidewalk inspection program, then the operation and
10 implementation of that program is inadequate and unreasonable. Plaintiff alleges that the Defendant did
11 fail to inspect and discover the dangerous condition and did fail maintain and repair sidewalk, and/or fail
12 to maintain trees it owns, including the immediate surrounding area. Plaintiff alleges that the Defendant
13 failed to warn Plaintiff of the defect in the sidewalk; failed to erect or place warnings. Plaintiff alleges
14 that the Defendant did fail to timely effect maintenance and/or repairs when the Defendant knew or
15 should have known of the dangerous condition. Plaintiff alleges that the Defendant was negligent in the
16 hiring, employment and supervision of its agents, servants and/or employees all with regard to the
17 above.

18 *Plaintiff's injuries:* Fell on face forward, striking head and face. Laceration of lip (stitches),
19 loosened teeth, chipped tooth, broken glasses, loss of consciousness (minor closed head trauma), strain
20 of cervical and thoracic spine, right shoulder sprain/strain, cervical radiculitis, and headache. Pain and
21 suffering, sleeplessness, shock to the nervous system and other general damages. Plaintiff suffers from
22 TMJ and/or a similar syndrome, which makes her dental work very painful. Several teeth injured have
23 been extracted. Plaintiff recently underwent dental surgery requiring extraction of multiple teeth.
24 Plaintiff will need dentures or implants. Claimant continues to have dental care and treatment.

25 *Plaintiff's damages:* Total amount unknown at this time. \$3,153 including: ambulance,
26 emergency care and treatment, chiropractic and replacement of glasses. Plaintiff has incurred expense
27 recently with regard to her dental extractions and oral surgery. Plaintiff has been unable to obtain billing
28

1 information from her dental providers. General damages, including pain suffering, time, inconvenience
 2 and other general damages: Not less than \$250,000

3 b. Defendant's contentions:

4 Defendant denies it is liable for plaintiff's accident. The sidewalk was not unreasonably
 5 dangerous and any hazard was open and obvious. In addition, the emergency room report suggests both
 6 that plaintiff was not seriously injured and that she may have caused her injuries on her own.

7 2. The Principal Factual Issues Which the Parties Dispute

8 a) The nature and extent of plaintiff's injuries.

9 b) The cause of plaintiff's injuries.

10 3. The Principal Legal Issues Which the Parties Dispute

11 a) Whether Plaintiff was contributorily negligent.

12 4. Other Unresolved Issues.

13 None at this time.

14 5. Unserved and Additional Parties.

15 All necessary parties have been served and appeared.

16 CONSENT TO MAGISTRATE JUDGE FOR TRIAL

17 Defendant did not consent to the assignment to Magistrate Judge for trial.

18 ALTERNATIVE DISPUTE RESOLUTION

19 The parties filed NOTICE OF NEED FOR ADR PHONE CONFERENCE on December 3, 2007 and
 20 requested an early settlement conference with a Magistrate Judge. Counsel request the court take into
 21 consideration the suggested date of April 2008 for early settlement conference in formulating its Order.

22 DISCLOSURES

23 The parties have met and conferred regarding Fed.R.Civ.P. 26(a)(1) initial disclosures. The parties'
 24 respective documents, statements regarding insurance and list of witnesses will be exchanged on or
 25 before December 14, 2007, the day of the initial case management conference. In addition, plaintiff will
 26 provide a damages calculation on or before December 14, 2007.

27 The parties will exchange expert information after the initial settlement conference, if permitted,
 28 in accordance with deadlines established by the Court.

1 MOTIONS

2 The parties do not anticipate making dispositive motions. At present, only motions in limine are
3 anticipated.

4 DISCOVERY

5 The parties request that no limitations on discovery be imposed beyond those in the Federal Rules of
6 Civil Procedure. The parties' meeting and conference has resulted in the following proposed schedule:

7 Initial subpoenas to plaintiff's health care providers: December, 2007

8 Initial deposition of plaintiff: February, 2008

9 [Settlement Conference] April 2008

10 Close of Fact Discovery December, 2008

11 Close of Expert Discovery February, 2009

12 RELATED CASES

13 Plaintiff filed WESLEY vs DICK MORGANTI NIBBI, et al. C 07 0006 MMC before exhausting
14 administrative remedies. With the appearance of Defendant in this matter, plaintiff will voluntarily
15 dismiss C 07 0006 MMC before December 14, 2007.

16 TRIAL SCHEDULE

17 If the case does not resolve at the early settlement conference, the parties request this case be set for trial
18 in April of 2009. As this case is governed by the Federal Tort Claims Act, the matter will be tried to the
19 Court.

20 DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

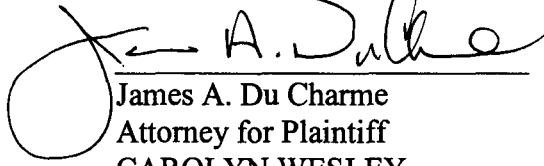
21 Plaintiff will file her "Certification of Interested Entities or Persons" as required by Civil Local Rule 3-
22 16 before December 14, 2007. Plaintiff's counsel certifies that as of this date, other than the named
23 parties, there is no such interest to report.

24 SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

25 Pursuant to Local Rule Civil 16-8(b)(1), each counsel certifies that he has read the brochure
26 entitled "Dispute Resolution Procedures in the Northern District of California, discussed with the their
27 clients the available dispute resolution options provided by the Court and private entities, and has
28 considered whether this case might benefit from any of the available dispute resolution options.

1 Dated: December 07, 2007

DU CHARME & COHEN

2 
3 James A. Du Charme
4 Attorney for Plaintiff
5 CAROLYN WESLEY

6 Dated: December 07, 2007

7 s/ Abraham Simmons
8 Abraham Simmons
9 Attorney for Defendant

10 **CASE MANAGEMENT ORDER**

11 The Case Management Statement and Proposed Order is hereby adopted by the
12 Court as the Case Management Order for the case and the parties are ordered to comply with
13 this Order. In addition the Court orders:
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19 Dated: _____

20 _____
21 HON. MAXINE CHESNEY
22 UNITED STATES DISTRICT COURT JUDGE
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